International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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October 15, 2012

Lester Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street N.W. Room 11602
Washington, DC 20570-0001

RE: Hanson Aggregates B.M.C. Inc.
Cases 4-CA-3330,4-CA-33508,4-CA-33547,
4-CA-34290, 4-CA-34362, 4-CA-34363,
and 4-CA-34378

Dear Mr. Heltzer:

In reply to Region Four letter of October 12th 2012, Counsel for General Counsel has once again ignored the Facts of the above Caption Cases, in belief the Board will simply make a decision of error, like Region 4 has done. Hopefully, the Board has the fortitude and performs their duties under the Act and for the people of this Country, and takes the diligence needed in examining this Case, which if done, will unveil numerous errors committed by the Region in Compliance of these Cases. If so, not only a remand should be sent back to the Region for Compliance, but an investigation on obstruction of Justice byway the Region has ignored the Board Order of 2008, Federal Court Order of 2009 and manipulation of the enforcement to this Order.

The ***'NEW'*** Evidence, as Region 4 now cites, submitted by my letter of October 3rd is '***Malarkey***' as VP Joe Biden would find! How can the Region have the arrogance to cite **4-CA-69822** as "**New**' when they have been holding it in their pocket for nearly a year? The Region surreptitiously omits when **4-CA-69822** was filed with their Office. I have attached this Charge of 4-CA-69822 which you will see was written out by the Region, which I signed on November 30th 2011, after I was informed that Charge **4-CA-064876** had possible merit findings.

The Region is trying to conceal from this Office and the Board, Charge **4-CA-064876** filed on September 20th 2012. 4-CA-064876 is consolidated to 4-CA-69822 as you will find the same language in both Charges. The Union provided evidence to 064876 in a timely manner and a prima facie finding was found in **NOVEMBER** 2011 and asked by the Region if the Union would consolidate which they did by new Charge of 4-CA- 69822. Now, the Union wonders why? Did the Region discard 064876 and place it into 69822 to delay the finding so they could close compliance to the above reference Cases by dating and docketing the New Charge for the Month of November 2011? I now believe with the

insurmountable evidence discovered, the Region took 064876 findings and asked the Union to place it in 69822 for reason to hold their findings off, so they could close Compliance of the above reference Cases! No other reasoning would weigh here since the Region own written Charge of 69822 only component of merit finding was the portion of the Employer setting wages and term and conditions without bargaining, which would obstruct Compliance.

Why has the Region held 69822 for nearly a year before a Complaint was issued? Why did the Region take a Charge filed in September and have the Union refilled it in November? And who gave the Region the Right to forego the Case Handling Manual Section 10126.1 and 10126.2? Why was Compliance issued with the Region knowledge of the violation of 064876 of unilaterally setting wages and conditions, which is a direct violation to these Compliance Cases?

While the Region cites this as '***New***' evidence and not been noted before, I am further providing again my letters to this Office now highlighted in **Yellow** where this Charge is repeatedly referenced which will only sustains my argument of more inept handling by the Region.

The Region had no legal standing to conclude Compliance with knowledge that this Charge would block any compliance. If the Region would have done their duty and issued a Merit finding as prescribed in the Case Handling Manual Section 10126.1, this issue would not be before this Board. But the Region has held this Charge for nearly a year before an actual Compliant was issued! This action is an obstruction of Justice by the Region and should be sent not only to this Board, but to the Attorney General Office of the United States.

The Region as of Friday October 12th is now playing sport, by contacting the Union and trying to settle 69822 by negotiating with the Respondent by giving everyone that was harmed in September of 2011, 8 hours pay instead of the one hour the Employer did without bargaining with the Union.

The Region now acts as an (unwanted) Agent for the Union in negotiating wages and terms and conditions, the very contrary as the Region has cited of the crux of not enforcing the Board Order of the above Reference Cases. The Region cites on Page 16 'C' of their response of the Charging Party request of review. *In effect, the Union asserts that the Region should have acted as its agent to communicate its changed rescission request concerning the compensation system*, While the Union has argued to the state of nausea that the employer thumbed its nose 'each time' to the Unions demand to comply to the Board Order, so does the enforcement agency of the Court Order, but now wants to act as an Agent to bargain conditions of employment. Again, the Union only request is the Region performs their job as assigned in the Board Order of 2008.

The only new evidence submitted to your Office of the Executive Secretary is the question of Notes and Memo that should be extracted from the Board Agents of Compliance as noted in my Appeals to this Office. The Region submitted some of these notes and memos in their response to the Charging Party Request for review. Where are the others?

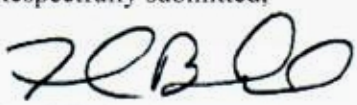
To Conclude; while the Region now feels, 4-CA-69822 is only an error by the Employer of a one day event, the Employer has not responded to any open proposals in this regard for nearly a year, contrary to the Region written position! Whether its one day, a week or month, this is an event of 'weather' as noted by the Region! Weather, is an element that can inhibit work when performing work outside. The Region should setup shop for a week outside to get a full understanding of this. I recommend any week in January!

Regardless, whether it is a day of setting wages and conditions, what does the Region not connect in the Board Order language of 2008…*2. Take the following affirmative action necessary to effectuate the policies of the Act. (b) Rescind the changes in wages, hours, and other terms and conditions of employment unilaterally implemented on January 1, 2006, **and negotiate with the Union in good faith until we reach an impasse after bargaining in good faith***. The Region again ignores the wording of the Order and does as it dam pleases to rid this Case from their workload.

While the Region now wants the Union to enter into a forth (4) Formal Settlement of violating the Board Order of 2008, what happens tomorrow if a major storm occurs and the employer once again wants to change conditions of employment? And simply, how many Formal Settlement Agreements will Region 4 provide to this unlawful employer? We should all thank God the Region philosophy is not the same of the State Courts of violators of Drunk Driving, for if so, the roads would be a bloody mess.

The Region has submitted nothing but smoke and mirrors to cover up the very element that compliance by legal standing has ever been met! And with no explanation on why **4-CA-064876** was then placed into **Charge 4-CA-69822** and filed/docketed two months after the evidence of the facts were found in 064876!

Respectfully submitted,



Frank Bankard
IUOE Local 542

Cc: Region 4
John Nadler

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
04-CA-069822	11/30/11

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Hanson Aggregates Inc.

b. Tel. No. 215-598-3152

c. Cell No.

f. Fax No.

g. e-Mail

d. Address *(Street, city, state, and ZIP code)*
852 Swamp Road
Penns Park, PA 18943

e. Employer Representative
Jeff Carey

h. Number of workers employed
approx. 30

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Quarry

j. Identify principal product or service
Stone

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (3), (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
(See Attached)

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
International Union of Operating Engineers Local 542, AFL-CIO

4a. Address *(Street and number, city, state, and ZIP code)*
1375 Virginia Drive Suite 100
Fort Washington, PA 19034

4b. Tel. No. 215-542-7500

4c. Cell No.

4d. Fax No.

4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*
International Union of Operating Engineers, AFL-CIO

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Frank Bankard, Organizer
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 1375 Virginia Dr, Suite 100, Fort Washington, PA 19034

11-30-11
(date)

Tel. No. 215-542-7500

Office, if any, Cell No.

Fax No.

e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

On or about August 8, 2011, the Employer refused to consider or hire James Quarles for an open loader position, because of his support for the Union in violation of Section 8(a)(3). In addition, the Employer refused to bargain, upon request, about how to fill the open loader position in violation of Section 8(a)(5).

On or about August 15, 2011, in violation of Section 8(a)(5), the Employer set a wage rate for the bargaining unit position of loader II, which was an unlawfully implemented wage rate as already determined by the National Labor Relations Board.

On or about September 8, 2011, the Employer sent home a number of unit employees due to inclement weather, rather than allow these employees to work odd jobs as was done in the past.

Since on or about September 8, 2011, the Employer has refused to bargain over how to handle work assignments when faced with inclement weather.

On or about September 9, 2011, the Employer decided to pay the employees sent home early on September 8, 2011 one hour "show-up" pay. This represented a unilateral change in terms and conditions of employment, as there had been no past practice. In addition, since on or about September 9, 2011, the Employer has refused to bargain over the amount of "show-up" pay.

FORM NLRB-501

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
04-CA-064876	9-20-11

INSTRUCTIONS
File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Hanson Aggregates Inc.	?

c. Address (street, city, state, ZIP code)	d. Employer Representative	e. Telephone No.
852 Swamp Road, Penns Park PA, 18943	Jeff Carrey	(215) 598-3152

f. Type of Establishment (factory, mine, wholesaler, etc.)	g. Identify principal product or service
Stone Quarry	Stone Quarry

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On about August 8th 2011 the above employer refuse to hire James Quarles for an open position because of his support and sympathetic position towards the Union.

On August 15th 2011 the above employer promoted a laid off worker from another location to a bargaining unit position which the Union demanded beforehand to bargain. The employer further established its own wage for this position after the union informed the employer it was not in conformance with a Board Decision of 2008 and the unions demand on the position of wages.

On or about the week of September 5th 2011 the above employer on its own accord and without notifying or bargaining with the Union, sent home a number of workers and established a pay-plan without bargaining with the Union.

The above actions are direct violations to the Board Order of 2008 and Formal Settlement Agreement and Board Order of 2011. The Union seeks immediate enforcement of both Orders in Federal Court.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

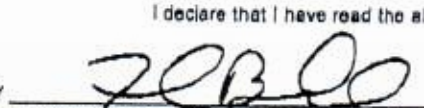
3. Full name of party filing charge (if labor organization, give full name, including local name and number)
International Union of Operating Engineers Local 542 AFL-CIO

4a. Address (street and number, city, state and ZIP code)	4b. Telephone No.
1375 Virginia Drive Suite 100 Fort Washington PA 19034	(215) 542-7500

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.
International Union of Operating Engineers Local 542 AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Frank Bankard Title Organizer
Signature of representative or person making charge

Address	Telephone No.	Date
1375 Virginia Drive, Suite 100 Fort Washington, PA 19034	215 542-7557	9-20-2011

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT
(U.S. CODE, TITLE 18, SECTION 1001)

International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

ROBERT HEENAN
Business Manager

CHARLES PRISCOPO, Ass't Bus. Mgr.
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FAX: (215) 542-7557

July 6th, 2012

Lester Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington, DC. 20570-0001

RE: **Hanson Aggregates BMC, Inc. *and* International Union of Operating Engineers, Local 542, AFL–CIO.**
Cases 4–CA–33330, 4–CA–33508, 4–CA–33547, 4–CA–34290, 4–CA–34362, 4–CA–34363,and 4–CA–34378

Dear Mr. Heltzer:

I am writing to appeal the General Counsel's denial of the Charging Party's appeal and closing the above caption Cases which are being closed on compliance. I am specifically appealing the Employer's failure to comply with every part of the Board's Order and the Region's failure to enforce the Board's Order in its entirety.

In reply of June 26th Appeal denial for the General Counsel, the person who wrote the denial and stated ***'Region request for written confirmation was appropriate***" I will clearly illustrated that this was done **repeatedly** throughout the course of 2008 and through the Regional Director closing of the above Cases!

The Board's Decision in this matter stated that among other things "on request, rescind the change to terms and conditions of employment unilaterally

implemented on October 24, 2005 and January 1, 2006". Hanson Aggregates BMC, Inc., 353 N.L.R.B. 287, 290 (N.L.R.B. 2008). This has never been done by the Employer, even though the union has to the state of nausea informed the employer since **October 2008** to restore all conditions of employment to October 2005 and ongoing.

Counsel for General Counsel, improperly insists that the Union request in writing that the Employer rescind its wage increases when she wanted to close compliance in 2011. This should not have been asked, for reason that she demanded this in **March of 2010 by way of Affidavit**. The Union on numerous occasions, both in writing and repeatedly at the bargaining table, has **demanded** that the Employer comply **in total** with the Board's September 30, 2008, Decision and again **restore everything**! The Administrative Law Judge held and the Board affirmed, the Employer should rescind all illegally implemented terms and conditions of employment that it instituted after having declared impasse improperly. Instead of complying with the Board's order, the Employer picked and chose which parts of the Boards Order it wanted to comply with which was permitted by the Region and not as directed in the Board Order.

I am unable to determine all the parts of the Boards order they chose to comply with as they have not given me information in this regard, nor have they informed me of what they chose to comply with.

The crux of this matter is what conditions of employment, including wages are to be restored to the previous levels prior to the Employer's improper implementation of their last, best, and final offer. The Administrative Law Judge ruled, and the Board affirmed that upon request all conditions of employment should be rescinded. Region 4 insisting again that the Charging Party seek this request in writing, is merely a tactic by the Employer tweaking the Regional Director nose and her allowing for it. The Regional Director has an Affidavit in hand which should and only be the tool needed for Compliance.

While the Union feels placing in writing again, to the Employer of its demand on wage recession, the Union did conform again in a modified letter regarding this to the Employer (see Exhibit 5) but then told by the Region it was too late! The Region to place time associations to any matter of this regard is humorous at best as I will further illustrate in this Appeal.

First, the Union has felt that the need to place in writing to the Employer directly for wages recession was not necessary since the Employer insisted that they would not conform to the Unions demands, but would only conform to what was specially ordered by the Region.

Regardless of the fact, the Union in Exhibit 5 did place in writing to the Employer what the Regional Director instructed the union to do and then was told by the Region it was too late.

The Region sat on a Federal Court Order to comply with the above caption Cases for **over 2 years**! The Region also through its Compliance Officer directed the Union to place the Union desires in an affidavit which the union did. I will note; a time of March 2010 after the Court issued it Order of Enforcement.

The Region was derelict its duties of non-conformity once the Affidavit was signed giving the Region the direction of the Union. Since the Federal Court Order was in Force, it is Contemptible by Counsel for General Counsel not to force the hand of the Employer once the Affidavit was given!

The Confidential Affidavit is set forth in a witness to Region 4 which General Counsel has access. Further correspondence of the Unions demands in this regard to comply to the Board Order, can be found at the bargaining table and by letter of October 8, 2008 addressed to Counsel of the Employer Karl Fritton. In that letter ***"Local 542 further demands the Employer rescind the changes to the terms and conditions of employment, unilaterally implemented by the Employer on October 24, 2005 and continuing, as referenced in paragraph 2b of the Board's Order."*** (Exhibit 1) On December 24, 2008 during bargaining I again reiterated that I wanted all changes be rescinded and restored and reiterated that I made that request in October. (See Frank Bankard bargaining notes Exhibit 2, irrelevant parts redacted) This demand that they implement the Board's Decision in its entirety was reiterated many times. In addition, on July 9th, in response to a question from Jeff Carey, chief negotiator, for the Employer, he asked when do you want the wages restored to the 2005 base? **I replied what about this afternoon**? This was stated twice, that the Union wanted the wages restored to the 2005 level. This occurred once again on January 11 when I asked if the pay scales had been restored and he replied no, but we will comply with the Board Order. My continuing question to Jeff Carey was when? And his continuing answers was when the Region tells them to do it. Again why was this not done by the Region?

I also sought that the conditions all be restored to 2005 levels in a March 20 2009, (Exhibit 3) and November 15, 2011 (Exhibit 4) letters to Jeff Carey (and reiterated this in an Affidavit to the Region dated March 16, 2010, (Exhibit 5). In March 20th letter, **No. 11 states restore all Policies**. The Skill Point Policy has never been restored!!!! Simply, it does not matter what the Union informs the Employer to do, since inception/certification, the Employer has acted like a rogue, committed dozen of unfair labor practices or simply crapped on the Union!

A perfect example the Employer picking and choosing which parts of the Board's decision to implement is its position on restoring the Skill Points which the Employer has not paid since 2005, and which the Employer claims to the Region Compliance Officer, the improperly implemented raises exceed the Skill Points **of the majority** of employees would have received. Skill Points are a policy in which every time an employee learns a new skill, procedure or attend a class, he or she receives .07 cents per hour. This practice was illegally ended by the Employer and it chose, over the Union's objections not to restore this. Region 4 Compliance Officer feels that the majority of the unit faired better with the Employers illegal pay increases rather than the Skill points. First, that is not for her discretion for Compliance, only for back wage calculation! Nowhere in the Board Order does it imply if illegal implemented parts benefit the employee, they should stand! The Board order is specific to restore upon the Union request, which is painfully clear the demand to restore everything. The Compliance Officer is further unaware of the dynamics and specifics of the Skill Points Policy, which the union is not! Regardless, this is not her decision or the Region. Both have a duty to follow the Order of the Court and the Board!

We believe in speaking with the unit, the majority of our unit would benefit financially more if wages were rescinded and Skill Points restored from 2005 to present. More importantly, the Employer, with the Regions *imprimatur,* has been allowed to pick and choose what it wants to implement.

This failure to enforce the Board's Order has caused financial harm to our unit and eroded support for the Union. If the Region's Compliance Officer would have fulfilled her duties under the Act and Federal Order, our unit would have received Skill Points from 2005 through today. But this is not the case! Our unit has been in limbo and wages frozen during this Compliance investigation and currently. This in itself is a derogation of the Board's mandate and erodes support for the Union. Today, no skill points have been awarded causing employees to question the efficacy of the Union. This is a far cry from the Act's purpose and ignores the Board order of 2008 which Counsel for General Counsel is obligated to serve.

One of the most important aspects to this Case or non-conformity by the Region and General Counsel is that a third of the Unit did not get any illegal pay increase like two thirds did. A third only received a onetime lump sum payment! In simple terms, a third of the unit wages have not moved one cent from 2004!

Region 4 and the Employer are engaging in gamesmanship, trying to trap the Union into making a written statement which will be craftily abstracted and used in organizing campaigns and the pending decertification election. The Union should not have to place what they demand in writing to the Employer especially when they postured their position to only comply as specifically directed by the Region! That said and with the affidavit to the Region, notes,

and letters, the Employer has not complied with the Board's Order therefore compliance in this matter should not be closed.

The Board's order clearly states on request, rescind the change to terms and conditions of employment unilaterally implemented on October 24, 2005 and January 1, 2006". Again, this demand has occurred repeatedly by the Union and first occurrence can be found within 24 hours after the Order became Public.

There is nothing in the Order regarding that any request be explicitly in writing. In any event, the Union made the request and did so in writing upon the Regional Director insistence of a Affidavit in 2010 and again in writing in 2011. Therefore, the Region's failure to enforce the Board's Order, in full, fails to put the Employer in compliance with the Order but more so with the Federal Court Order.

The Regions interest lies not with the Employer or the Union. The Regions interest relies in the enforcement of the Act and its duty of an Officer of the Court to enforce a Court Order! Placing roadblocks in the enforcement of this Order, flies in the face of the Act and the Court! The Order, has been signed and enforced now for years by the Federal Court but the Region allows the Employer to take it sweet time to comply, or more so not comply! Example; the Employer discontinued a Certified Pension Plan which the Region told the Employer they needed to restore. This took understandably an amount of time to comply with. But the union further demanded that Skill points be restored and wages which is simple a mechanism to do and instead of the Region fulfilling it fiducially duties, the Compliance Officer pursued her own agenda, not the Unions demand.

Instead of the Region refuses to perform its lawful duties to enforce the Board Order, the Region requested an affidavit by me on the particular rescission of wages and restoring Skill Points which I have complied with. Undisputedly in that Affidavit, the Unions position was clear to restore wages and restore the Skill Points. The Compliance Officer demanded the Union to give an Affidavit on this matter which took time and expense, then placed her own agenda or belief that the 'majority of the unit raises exceed skill points which would have been earned. Again, this is not for her choosing, and disregards the integrity of the Affidavit, the Court the Board of 2008!

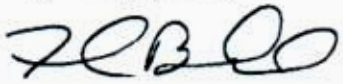
I find it ever so peculiar that during the Region time frame of closing these Cases, a **Merit** finding by the Region was found in Case 04-CA-069822 which the Employer, again, set wages without bargaining with the Union. Simply, the Employer continues to spit in the face of the Union, while Region supplies a fountain to the Employer.

Accordingly, the Charging Party, International Union of Operating Engineers, Local 542 believes that the Employer is not in compliance and this Case should not be closed. I further want to place emphasis that when the Region in 2011 again wanted the Union to place in writing to the Employer to rescind the wage increases, the Union sent the new Compliance Officer the Affidavit of March 2010 and instructed the new Compliance Officer to follow with the Union direction as spelled out in that Affidavit of March 2010. There was no further need for the Union to communicate with the Employer on this matter since the Union directed the enforcing agency (Region 4) of what the Union wanted for Compliance. Furthermore the position of the Employer was not to conform to the Unions demands from 2008 to present, only the Region! Why would the need for the Union to spell out to the employer 3 years later what they were asking for, for three years???????

Closing these Cases with an Affidavit signed by the Union instructing Counsel for General Counsel, mocks the integrity of the entire Affidavit process of this Agency. And may set new standards if this Board does not remand these Cases back to the Region for Compliance as directed in the Affidavit demanded by the Regional Director for path of compliance.

Thank you very much for your attention in this matter.

Very truly yours,



Frank Bankard
International Union of Operating
Engineers, Local 542

Cc: Dorothy Moore-Duncan, Esquire
Jonathan Nadler, Esquire

International Union of Operating Engineers

LOCALS 542, 542-RA, 542-C, 542-D

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September 6, 2012

Lester Heltzer
Executive Secretary
National Labor Relations Board
1099 14th Street NW
Washington, DC. 20570-0001

RE: Reply to the Region response to Union request for Board for review on Cases; **Hanson Aggregates BMC, Inc.** ***and*** **International Union of Operating Engineers, Local 542, AFL CIO.** Cases 4–CA–33330, 4–CA–33508, 4–CA–33547, 4–CA–34290, 4–CA–34362, 4–CA–34363,and 4–CA–34378

In response to the Region 4 reply on my request of the Board for review and enforcement of a Board Order of September 2008 of the above Caption Cases, I am appalled as a Union Representative, tax payer and one who labors, on the Region mistruths, distortion of facts and overall handling of this Compliance.

Truly, with a reply like this from a Region of the National Labor Relations Board, I can understand on how the American workers can be abused by Attorneys crafty misinterpretation of Fact, in the system in which they are held under these guidelines.

The Region, acting for General Counsel, has failed miserably in enforcing the Law and labels themselves in their reply, as a third party of the Law rather than an enforcement Agency which they are. ***"The Region never offered to act as the Union's agent with respect to fulfillment of this legal obligation".*** There has never been a request made by the Union for the Region to act as an 'Agent'. The only request to the Region by the Union was to do their duty! The Union has provided the Region with volumes of bargaining notes and letters which the employer has thumbed their nose to the Union from September 30th 2008 and beyond, each time the Union has asked the employer to comply with the Board Order. And again, the Union is oblivious of what the Respondent has done to comply with any of the Board Order.

Example: while the Region implies a Posting of Notice was place at the Employers facility, did the Region ever inspect this Posting**????** I believe not, and until I received the reply from the Region stating this, not one employee has mentioned or informed me about

any posting from the NLRB! The Employer also been told to provide a copy of all postings or any type of information to our unit to the Union within 24hours of being posted or distributed. Simply, what the Region cites as being done, hasn't!

The Region further fails to inform the Board that when Charges were found in 2005 against this employer and a Posting was posted, we then had a steward onsite who informed us and the Region, that the employer posted the Posting, 2 feet off the ground behind a Minimum hourly wage poster. This was only found by our steward after I asked him to check to see if the Posting had been posted in 2005 which after a week he was unaware. Maybe this is what the Region feels is an adequate way to notify the employees and to confer that the employer is in compliance.

The Region admits that the Board Order of 2008 requires no written demand from the Union, although, places one on the union because of ***'unique circumstances'***. There are no ***'unique circumstances'*** here! And the Regional Director is not the Board and should not add to the Order as it was written. The crafting of the Board in 2008 was clean and did not cite specific items to rescind. The Board through its wisdom knew not what the employer may have changed and therefore left it vague as in... ***(b) On request, rescind the changes to terms and conditions of employment unilaterally implemented on October 24, 2005, and January 1, 2006.)*** The Union used the Board language by insisting repeatedly **all changes** be **rescind** since October 2005! The employer was notified as the Region admits from day one to restore all conditions to 2005 as prescribed in the Board Order. But both the Region and the Employer play this charade game of not understanding the Union request, although, made in the same text as the Board! Merely, what has the Union cited since 2008 not to rescind to employer? That answer can't be found in any Notes, or letters because the Union has been specific to **all Changes be rescinded**!

What is unique about the word '**all**'? This text to rescind all changes is further cited numerous times in the Region reply and mentions three times this was done by the Union in writing! The Regional Director last admission of the union doing this is in a letter of November 2011 by the Union, but then places the union demand in a '***vacuum***' and ignores the Board Order and the Union position. While the Regional Director cites a letter giving some specifics of changes the Union made to the Employer on recession of changes, the Region omits the nexus within the letter of two words '***not all inclusive'*** when speaking on items the employer was not clear on. Wage and Skill Points were clear by the employer and specifically asked by the employer at the table when the Union wanted this done which can be found in Notes by the Union and the Employer. And that answer was today!

It is important to Note three things just on this issue:

1. When the union sent the letter to the Employer on November 15th 2011 informing them that the specific change 'Wages' had not been rescinded, the Employer replied in two days to the Union that they felt my request was not made in ***'good faith'*** and would reply later to my demand to rescind wages. **THIS NEVER HAPPENED**! But the Region still closed compliance. **WHY?** Apparently, whether the demand was in writing or verbal, the employer did what they wanted and the Region applauded their unlawful actions.

2. The Union notified the Region Compliance Officer of both these Letters on November 30th. Compliance Officer Shane Thurman then stated it may be *'too late'* now, notifying the employer in writing. **Has the Compliance Officer ever been question on this**

regard? And with this open information by the Employer, why would the Region close compliance? This is further convoluted in the Memo of July 2010 provide by the Region(**Exhibit 15**) of Compliance Officer Hollo with her indicating it may be too late! Simply, who has their facts correct here? Hollo in July of 2010 or Thurman in November 2011? Purely, someone did not do their job at the Region!

3. Three years and two months after the Board Order was issued, and two year after the Federal Court enforced the Board Order, the Region places shotgun tactics from October 2011 to November to close Compliance, this is beyond nonsensical!

In the Region response, it is indicated that the Union only objection is the recession of wages and restoration of skill points, although, the Union Appeal to General Counsel begins with the Union is still not aware of all things which were restored except for the Pension and that is not clear. Never has the Employer given a clean list of what and when changes were made from 2008 to December of 2011 or anytime after. Each time the Union has asked the employer what have they complied, the Employer response has been, *'we will comply as directed by the Region'*. These statements can be found in the employers Notes, which the Region has been given along with the Union Notes. Why has the Employers Notes not been given to the Board for review? It's painfully apparent that the Notes from each Party clearly indicate to restore wages to 2005 and Skill Points as directed and more specifically, within the context of the Board Order of 2008. The Region is more clear on the Union demand than the Sun coming out tomorrow, as the same as the Employer, but foregoes their duty under the Act.

In **Exhibit 14** of the Region response, Bankard email to Board Agent Hollo of January 2010, what is unclear to the Region or General Counsel of not restoring everything that was changed in 2005 unlawfully including wages? The conclusion of that email in 2010 states specifically on restoration of wages, but again, is ignored by an Officer of the Court!

Even after that email, Board Agent Hollo has Bankard come in to give an Affidavit in this regard on skill points and wages so there is no uncertainty of what the union is seeking. But again nothing is done by the Region!

I find it ever peculiar of the Region **Exhibit 15** Memo that now wage recession may be to late to be enacted, but over a year later, the Regional Director wants the Union to put this in writing. Seems this alone should show the Region cannot keep tabs with their fable. Truly, what is going on at the Region? In July 2010 the Region feels the time for wage rescission may have past, but over a year later, the Region wants the Union to place wage recession in writing.

The Clear Understanding of the Region on the Demand by the Union

I further find no Statement or Memo by Board Agent Hollo by the employer Counsel John Nadler when she told him that the Union wanted wages restored in 2010. Nadler, told her specifically, the employer would never do this! Where is this Memo at? Why has this not been brought to the General Counsel attention or submitted to the Board for review? Nadler or the Respondent clearly spits in the Eye of the Order of 2008 and Court enforcement of 2009 when the Acting Agency of the Government informs them to comply! This should have been sent to Contempt, not left in Compliance with this knowledge or more so the refusal of the employer to comply with the Law!

While the Region can degrade me because I am not an Attorney with crafty language and Memos fabricated weeks after an event occur which the Region provides, the Union out of frustration had their Counsel contact Attorney Hollo which he gave a directive of wage recession to her, (**Exhibit 15**) but again, the Region does nothing about it and then states to the Board that the Union request of review is '***meritless'***. 'Meritless' can be found by the Region of not enforcing the Board Order or the Court Order. Basically, the Region finds a union agents letters and notes unclear to force compliance but then does nothing with a directive from some of the same cloth.

While the Region believes that the unlawfully wage increases out weighted skill points, the Region omits or does not clarify, the employer analysis only goes from November 2009 back to January 2006. **WHAT ABOUT DECEMBER 2009 TO TODAY!!!!!!!** While the Region does admit that only a few lost income from not gaining skill points and one was paid over $10,000 in lost of wages for not receiving skill points, regardless of his wage increase he received, how does the Region close compliance 2 years and 1 month later without further correction on this one individual and others? Furthermore, the Region never estimated or took into account Skill Points not accounted for the 'Red Circle employees who only received a onetime check. Their wages have been frozen since 2004! Simply, the Employer has not increased wages since 2007 a factor not aware to the Board of 2008 when their decision was written. That said, the Region takes the employer data of November 2009 compiles a back wage calculation for those that would have received more in skill points than the wage increase they received, and ends this calculation in November 2009! Ludicrous?

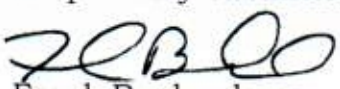
With the Region evidence in **Exhibit 22** and knowledge that employees whether one or all were shorted wages and no further correction made from 2009 to present, no Compliance has been met! Simply, those that would have received higher wages in Skill Points pay needs to be corrected from December 2009 forward. **AND WHAT ABOUT THE OTHERS Whose wages have been stagnated since 2007 and 2004!**

To conclude:

The Union is aware of the wages not being restored along with the skill points. The Union is further aware that Job Categories have not been replaced as they were in 2005, along with Company Housing that was given out from 2006 to present to any employee of the Company choosing along with the Dental Holiday as mention in the Board Order never being restored, and as prescribed in the Order of 2008. And who knows what else!

The Region has further closed compliance with 04-CA-069822 of a merit finding against the employer changing condition in wages in August of 2011. With that finding alone, the employer hands were not clean and no compliance should have been met. And time of 'Posting' should have not been started until that Charge meets a remedy! That said, that Case alone, should remand these Cases back to the General Counsel.

Respectfully submitted,



Frank Bankard